
OPINION OF THE PUBLIC ACCESS COUNSELOR

DOUNTONIA S. BATTS,
Complainant,

v.

INDIANAPOLIS PUBLIC SCHOOLS,
Respondent.

Formal Complaint No.
18-FC-52

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Indianapolis Public Schools (“IPS”) violated the Access to Public Records Act¹ (“APRA”). IPS Chief of Staff and General Counsel Ahmed S. Young filed a response on behalf of the district. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on April 4, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

On February 16, 2018, Dountonia Batts (“Complainant”), a member of the IPS Community Coalition, submitted a public records request via email to IPS seeking the following:

I am requesting an opportunity to inspect or obtain copies of public records that include the questions posed, comments received, and answers to each question contained in the survey the School of Board Commissioners paid for (or not) that pertains to the referenda and all topics contained in the survey.

IPS timely acknowledged Batts’ request and indicated it would respond “shortly.” In an email exchange on February 27, 2018, Batts thanked IPS for a meeting the previous day and for providing her with a “Community Survey Result Analysis Summary.” Still, Batts stated that the summary results did not seem to be a complete record of the records she initially requested.

On March 6, 2018, IPS denied Batts’ request, citing Indiana Code sections 5-14-3-4(b)(6) and (b)(12) as the statutory authority for the denial.

As a result, Batts filed a formal complaint with this Office on April 6, 2018, alleging the denial amounts to a violation of the Access to Public Records Act (“APRA”) by IPS.

IPS disputes Batts’ claim that it violated APRA by denying her request. First, IPS contends that it has discretion to withhold the requested record under Indiana Code section 5-14-3-4(b)(6), otherwise known as the deliberative materials exception. Second, IPS relies on Indiana Code section 5-14-3-4(b)(12) as additional authority for the denial.

ANALYSIS

The primary issue in this case is whether IPS had discretion under to withhold the requested documents under APRA.

1. The Access to Public Records Act (APRA)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *Id.*

There is no dispute that the Indianapolis Public Schools (“IPS”) is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6). What is more, there is no dispute in this case that the requested record is a *public record* as defined under APRA.²

Thus, unless otherwise provided by statute, any person may inspect and copy IPS’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Notably, APRA contains both mandatory and discretionary exceptions to the general rule of disclosure. Specifically, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public

² Ind. Code § 5-14-3-2(r).

records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

The dispute in this case involves IPS’s reliance on two of APRA’s discretionary exceptions —Indiana Code section 5-14-3-4(b)(6) and (b)(12)—as authority for denying Batts’ request.

1.1 Deliberative Materials Exception

IPS contends— and Batts disagrees—that the requested materials are protected from public disclosure under APRA’s deliberative materials exception, which provides public agencies with discretion to except the following from public disclosure:

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Ind. Code § 5-14-3-4(b)(6). The purpose of the exception is to “prevent injury to the quality of agency decisions.” *Nerwman v. Bernstein*, 766 N.E. 2d 8, 12 (Ind. Ct. App. 2002).

The record at issue in this case is a “Community Survey Result Analysis” (“CSRA”). IPS submitted a copy of the CSRA to this Office for *in camera* review as part of its answer to the complaint. It is worth mentioning that IPS released a summary of the CSRA to Batts, which included some of the information in the full report but not all of it.

IPS contends the portions of the report it withheld from disclosure constitute deliberative materials. This Office does not agree.

First, the discretionary exception for deliberative materials applies only to public records that are *intra-agency* or *inter-agency*. The dispute here involves a report analyzing the results of a public poll that IPS commissioned to gauge public support for its operating and capital referenda. The fact that IPS disseminated the poll questions to the public at large erodes any secret deliberative component to the poll. Prior opinions dealing with surveys were all addressed to situations wherein a third party exclusively conducted the polling and the underlying data was not provided to the public agency – only a summary and conclusory statements were turned over to the agency. Moreover, those opinion polls requested input on items of a more sensitive nature such as school security measures.

To an extent, IPS relies on those prior opinions to justify withholding the questions and underlying answer data. Again, in those cases, the agencies outsourced the polling to a third party and *the agencies were never in receipt of underlying data*. The third party vendors summarized the results and published them in the form of a “study.” To that end, and in the current case as well, the summaries, recommendations, and conclusions by the contractors are deliberative but not the aggregate data of the poll itself.

In this case, IPS provided the unredacted study to this Office for *in camera* review. Nothing in the study, if released, appears to be of a nature that would compromise the IPS decision-making process. The commentary was relatively generic and contained very little unique proprietary language

other than some universal recommendations. Granted, it may color the public's perception when voting on the referendum, but the IPS decision-making process would be intact and whole even if released.

IPS in good faith allowed this Office to review the unredacted materials *in camera* and there is no indication the district is attempting to obfuscate or hide anything. This Office simply disagrees with the impact the released study would have on IPS's internal deliberative decision-making process, which is mutually exclusive from the impact on community endorsement of the referenda.

1.2 Records Specifically Prepared for an Exec. Session

Alternatively, IPS argues that it has discretion to withhold the requested materials because they were specifically created for the purposes of discussion in executive session in accordance with Indiana Code section 5-14-3-4(b)(12).

Again, this Office cannot agree with that proposition. The purpose of an executive session is to discuss highly sensitive subject matter falling into the limited categories enumerated in Indiana Code sections 5-14-1.5-6.1(b)(1) to (15). The justifications for calling an executive session are narrow in scope and meant to protect the sensitivity of the underlying information. Material that is merely adjacent or germane to the executive session – unless it is inherently sensitive itself – does not give rise to the subsection (b)(12) exemption to disclosure.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that Indianapolis Public Schools should release the full Community Survey Result Analysis.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor